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OFFICE OF PETITIONS

DECISION DISMISSING  
REQUEST FOR REFUND

TECHNOLOGY CENTER 2800

JAN 28 2003

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In re Application of  
Blumich et al.  
Filed: February 19, 2002  
Application No. 10/078,069  
Attorney Docket No. ME 102  
For: APPARATUS FOR INSPECTING  
FLAT GOODS MADE OF POLYMERIC  
MATERIALS WITH EMBEDDED  
TEXTILE REINFORCEMENTS

In re Application of  
Blumich et al.  
Filed: December 18, 2001  
Application No. 10/026,067  
Attorney Docket No. ME 102  
For: APPARATUS FOR INSPECTING  
FLAT GOODS MADE OF POLYMERIC  
MATERIALS WITH EMBEDDED  
TEXTILE REINFORCEMENTS

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Technology Center 2800

This is in response to a letter filed March 8, 2002 in the application No. 10/026,067, requesting that (1) the filing fee of the application No. 10/078,069 be refunded, (2) the surcharge set forth in the "Notice to File Missing Parts of Nonprovisional Application" mailed on February 7, 2002 in application 10/026,067 be waived, and (3) the certified copy and information disclosure statement filed in application No. 10/078,069 be transferred to application No. 10/026,067.

The fact that applicant has filed duplicate or substantially duplicate applications does not entitle applicant to a refund of the filing fee. The papers filed on February 19, 2002, as application No. 10/078,069, are entitled to a filing date of February 19, 2002, and the filing fee paid in application No. 10/078,069 is the fee required by law.

37 CFR 1.26(a) reads:

(a) The Commissioner may refund any fee paid by mistake or in excess of that required. **A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent or trademark filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.** The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Commissioner may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. (Emphasis added.)

Section 607.02 of the Manual of Patent Examining Procedure, Eighth Edition (August 2001) reads, in part, as follows:

Under 35 U.S.C. 42(d) and 37 CFR 1.26, the Office may refund: (1) a fee paid by mistake (e.g., fee paid when no fee is required); or (2) any fee paid in excess of the amount of fee that is required. See *Ex parte Grady*, 59 USPQ 276, 277 (Comm' r Pat. 1943) (the statutory authorization for the refund of fees under the "by mistake" clause is applicable only to a mistake relating to the fee payment). **When an applicant or patentee takes an action "by mistake" (e.g., files an application or maintains a patent in force "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application or a maintenance fee submitted for such patent) is not a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d).** 37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will not entitle the party to a refund of such fee. (Emphasis added and error corrected.)

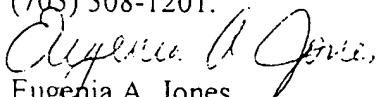
Accordingly, the request for refund is dismissed.

A review of the papers filed December 18, 2001 in application No. 10/026,067, reveals that no authorization to charge the filing fee was present. Furthermore, in the letter filed February 19, 2002, applicant acknowledges that the application papers submitted on December 18, 2001 did not include a fee authorization. Therefore, the \$65.00 surcharge set forth in the "Notice to File Missing Parts of Nonprovisional Application" mailed February 7, 2002, cannot be waived.

Applicant has requested that the certified copy and the information disclosure statement (IDS) filed in application No. 10/078,069 be transferred to application No. 10/026,067. Accordingly, the certified copy and information disclosure statement filed February 19, 2002 with the application No. 10/078,069 have been transferred to application No. 10/026,067. No record of these papers remains in application No. 10/078,069.

After mailing this decision, application No. 10/078,069 and application No. 10/026,067 will be forwarded to Technology Center 2800 for examination in due course.

Telephone inquiries concerning this communication should be directed to Terry J. Dey at (703) 308-1201.



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